

OLDAKER & HARRIS, LLP

ATTORNEYS AT LAW*

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June 20, 2000

Jeff S. Jordan
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

RE: MUR 4999

Dear Mr. Jordan,

This letter is in response to a complaint filed by John Mason, Chairman of the Nevada Republican Party against Edward M. Bernstein and Associates ("the firm" or "the law firm"), a law firm located in Nevada. This response is filed on behalf of the law firm, Edward M. Bernstein and Associates.

The Federal Election Commission ("the Commission") should immediately dismiss this matter since Mr. Mason has filed a frivolous complaint. A fair reading of Mr. Mason's complaint would be as follows: (1) Mr. Bernstein is a candidate for the Senate from the state of Nevada; (2) Mr. Bernstein is the principal of a law firm that advertises in print and on television; (3) the law firm's ads are statements by the firm's employees about Mr. Bernstein's character when dealing with the firm's clients. Mr. Mason alleges that, since character will be an issue in the campaign, the law firm has therefore made a contribution to the Bernstein for Senate Committee.

Even if the ads for the law firm were testimonials to Mr. Bernstein's good character, no violation of the Federal Election Campaign Act has occurred, since the ads were for the promotion of the firm's business and not for the purpose of influencing the election of candidate Bernstein

Mason Complaint is Disingenuous

Mr. Mason's disingenuous statement is highlighted on page three of the complaint, in the paragraph where he attests there is no difference between the ads run by the firm and those run by the Hyatt law firm. Mr. Mason clearly knew this statement was untrue, since in paragraph five on that page he states that the Hyatt ads sounded new

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public policy themes of health care and crime, two issues which Hyatt consultants knew would likely be raised in the campaign. Since the law firm ads contain no issues at all, Mr. Mason knew his allegation was untrue. (See attached advertisement transcripts). Further, an objective look at the transcripts for two previous ad campaigns run in 1994 and 1999 and the transcripts of ads being run in 2000 reveals a remarkable similarity. In fact, it reveals that the current advertisements are in essence unchanged from the advertisements the firm has typically produced. No new themes are introduced. No new issues are raised.

The ads in question in the Hyatt MUR and the ads being run by Edward M. Bernstein and Associates are very dissimilar. The transcripts reveal that the firm's ads have, at times, included Edward Bernstein and, at times, various employees of the firm. These ads have been produced by Explosive Media. A quick review of the transcripts indicates that they are nothing more than an attempt to sell the law firm under the guidelines set out in the restrictive nature of the Nevada code (copy attached).

Mr. Bernstein Acted Reasonably and Cautiously

Mr. Bernstein has acted as a lawyer and as a candidate with extreme caution. Mr. Bernstein was aware of and reviewed the Hyatt for Senate case prior to becoming a candidate for the U.S. Senate. Mr. Bernstein decided he would not appear on the law firm's advertisements after he became a candidate because he wanted to act prudently and cautiously. It should be noted that Mr. Bernstein could at this time continue to appear in his law firm add under the FCC regulations. In the Hyatt MUR, the Commission objected to, among other things, the use of the same media consultant by both the Hyatt campaign and the Hyatt law firm. Mr. Bernstein has taken great care to establish his Senate campaign as a separate and distinct entity from his law firm. He has hired campaign media consultants who have never worked for the law firm.

Mr. Bernstein's Non-Appearance In Ads

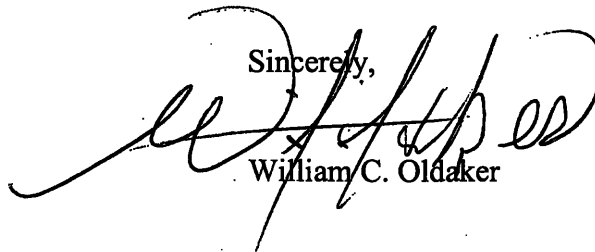
Mr. Mason seems to imply that Mr. Bernstein's current absence from the law firm's ads in some way violates the Federal Election Campaign Act. In the past, Mr. Bernstein has, from time to time, not appeared in the firm's ads. Clearly, when looking at the Hyatt conciliation agreement and the Hyatt case in general, the Commission did not object to Mr. Hyatt *not* appearing in his firm's ads, but the Commission did object to introducing the issues of health care and crime to the Hyatt firm's advertisements, particularly since they were crafted by a consultant who worked both for the campaign and the law firm. More specifically, under the language of the Federal Election Campaign Act, the Commission found that changing the ads by injecting these new issues was done for the purposes of influencing the election.

Conclusion

Edward M. Bernstein and Associates' ads are solely to promote the law firm. A fair reading of the ads demonstrates that they are not designed to influence the Senate race in Nevada.

The Commission should immediately dismiss Mr. Mason's complaint. Even if the facts alleged by Mr. Mason were proven true, they do not constitute a violation of the Federal Election Campaign Act. Mr. Mason alleges that the reference to Mr. Bernstein's character in the firm's ads violates the Federal Election Campaign Act since character will be an issue in the campaign. If the Commission were to proceed on this theory, any candidate for federal office would be required to take any mention of themselves out of their business' advertisements. Such a decision would have an extremely deleterious impact on personal service businesses such as law firms. It is clear that neither Congress nor the Commission has ever intended that a candidate either give up their business or limit their business during the duration of their candidacy. If the Commission decided a candidate could neither appear in ads for his/her business nor be mentioned in the ads, it would seriously limit the ability of certain individuals to become candidates for federal office.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Oldaker', is written over the typed name. The signature is fluid and cursive.

William C. Oldaker

EXPLOSIVE MEDIA

711 Mall Ring Circle Suite 101
Henderson, Nevada 89014
702.471.5780 fax 702.471.5775

SCRIPT

2000

TRANSCRIPT OF "EMPLOYEE TESTIMONIALS"

CRISTIAN FALCON

:30 Television commercial

Cristian: I AM THE FIRST PERSON THAT PEOPLE TALK TO WHEN THEY CALL OUR OFFICE AND WHAT ED HAS TAUGHT ME IS TO CARE ABOUT PEOPLE. FIRST IS TO LISTEN, LISTEN TO WHAT THEY TO HAVE TO SAY. A LOT OF TIMES PEOPLE ARE VERY QUICK TO CUT THEM OFF AND NOT LET THEM EXPLAIN EXACTLY WHAT TYPE OF PROBLEM THEY HAVE. WE LISTEN, WE CARE AND THAT IS WHAT ED HAS TAUGHT ME.

TAG / Nancy: EDWARD M. BERNSTEIN & ASSOCIATES; THE FIRST STEP IN GETTING THE CARE YOU NEED.

Cristian: WE TAKE AN EXTRA STEP, WE GO BEYOND OF WHAT IS EXPECTED.

2104-04-407

EXPLOSIVE MEDIA

711 Mall Ring Circle Suite 101
Henderson, Nevada 89014
702.471.5780 fax 702.471.5775

SCRIPT

TRANSCRIPT OF "EMPLOYEE TESTIMONIALS"

PAUL HAIRE Attny.
:30 Television commercial

Paul: ED HAS A NUMBER OF QUALITIES THAT SERVE HIM WELL IN NO MATTER WHAT HE DOES. HE IS SENSITIVE TO THE NEED OF THE CLIENT, HE IS DEDICATED TO HIS CRAFT. I HAVE NOTICED THAT ED IS ALSO VERY QUICK TO HEAR THE OPINIONS OF OTHERS BEFORE HE VOICES HIS OWN. HE TAKES WHAT SEEMS TO BE THE VERY BEST OF THOSE AND COMBINE THEM INTO AN OPINION THAT SEEMS TO BE THE RIGHT ANSWER EVERY SINGLE TIME THERE IS A PROBLEM.

24 "04" 403 "4013

EXPLOSIVE MEDIA

711 Mall Ring Circle Suite 101
Henderson, Nevada 89014
702.471.5780 fax 702.471.5775

SCRIPT

2000

TRANSCRIPT OF "EMPLOYEE TESTIMONIALS"

PATTI DONOGHUE Attny.
:30 Television commercial

Patti: I THINK THE MOST IMPORTANT REASON WHY PEOPLE COME TO BERNSTEIN & ASSOCIATES IS WHEN YOU WALK THROUGH THE DOOR THERE IS KIND OF A SENSE OF A FAMILY, A SENSE OF SOMEONE HERE WILLING TO HELP AND LIKE I SAID, A LOT OF TIMES YOU GO TO OTHER FIRMS AND YOU WALK IN AND IT'S COLD AND IT LOOKS LIKE AN ATTORNEY'S OFFICE BUT YOU DON'T GET THE PERSONAL SERVICE LIKE YOU DO HERE.

TAG / Nancy: EDWARD M. BERNSTEIN & ASSOCIATES, THE FIRST STEP IN GETTING THE CARE YOU NEED.

Patti: THE FIRM PRETTY MUCH IS ED'S PHILOSOPHY, SO HOW WE DO BUSINESS HERE IS HOW ED DOES BUSINESS EVERYWHERE.

24-04-407-4014

EXPLOSIVE MEDIA

711 Mall Ring Circle Suite 101
Henderson, Nevada 89014
702.471.5780 fax 702.471.5775

SCRIPT

2000

TRANSCRIPT OF "EMPLOYEE TESTIMONIALS"

PAUL HAIRE Attny.
:60 Television commercial

Paul: ONE DAY ED OVER HEARD A TELEPHONE CONVERSATION I WAS HAVING. THERE WAS A PROBLEM AND THE CLIENT WHO WAS EXPECTED TO BE IN LAS VEGAS FOR A COURT PROCEEDING THAT WOULD LAST MOST OF THE DAY, HE ALSO HAD TWO SMALL CHILDREN AND THERE WAS NO ONE TO WATCH THEM AND WHEN I HUNG UP THE PHONE ED ASKED WHAT THE PROBLEM WAS AND I TOLD HIM. HE SIMPLY SAID HAVE THE CLIENT BRING HIS KIDS HERE. WHEN THE CLIENT DID SHOW UP WITH HIS KIDS ED HAD ASSIGNED AN EMPLOYEE IN THE FIRM TO WATCH OVER THE KIDS. THERE WERE TOYS IN THE ROOM AND THEY WERE WELL TAKEN CARE OF SO THAT THE FATHER COULD CONCENTRATE ON WHAT HE NEEDED TO CONCENTRATE ON FOR THE COURT PROCEEDING.

TAG / Nancy: EDWARD M. BERNSTEIN & ASSOCIATES, THE FIRST STEP IN GETTING THE CARE YOU NEED.

Paul: WHAT I LEARNED THAT DAY ABOUT ED WAS THAT OUR FIRM WAS MORE ABOUT HELPING THE FAMILY EVERY BIT AS MUCH AS HELPING THE INDIVIDUAL CLIENT AND INDEED HE INSTILLED IN ME THAT DAY THE DESIRE TO TREAT THE CLIENTS FAMILY AS I WOULD MY VERY OWN.

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EXPLOSIVE MEDIA

711 Mall Ring Circle Suite 101
Henderson, Nevada 89014
702.471.5780 fax 702.471.5775

SCRIPT

2000

TRANSCRIPT OF "EMPLOYEE TESTIMONIALS"

MARIA FERNANDEZ-ATKINSON

:30 Television commercial

Maria: I REMEMBER THIS ONE TIME ED GRABBED ME. THIS CLIENT COULDN'T GET TO THE OFFICE. HE DIDN'T HAVE ANY TRASPORTATION, SO WE WENT OUT TO THEIR MOBILE HOME IN 116 DEGREE WEATHER AND WE SAT THERE AND HE EXPLAINED TO THEM PATIENTLY UNTIL THEY UNDERSTOOD EVERYTHING ABOUT THEIR CASE.

TAG / Nancy: EDWARD M. BERNSTEIN & ASSOCIATES, THE FIRST STEP IN GETTING THE CARE YOU NEED.

Maria: AND THAT'S THE KIND OF CARE THAT HE TAKES WITH HIS CLIENTS AND WITH EVERYONE THAT HE MEETS.

24-04-407-4016

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Produced 1/22/99
Maria Fernandez-Atkinson - Legal Assistant & Nancy Bernstein (Spanish)

Maria:

I remember when I started working for Ed Bernstein 12 years ago. Ed was already helping our Latin community with his legal services.

Nancy:

Yes, also Ed is a person that doesn't give up and he believes in what is right and that is why he continues helping injured people.

Maria:

That is why I work for him.

Nancy:

And that's why I married him.

Tag: Edward M. Bernstein & Associates
Attorneys At Law

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24-004-407-4017

24-04-407-4018

1999 Commercial Spots

produced 1/22/99

Maria Fernandez-Atkinson - Legal Assistant (Spanish)

I started my employment with Bernstein & Associates as a receptionist. Today, I'm a legal assistant and am currently attending UNLV Law School to better assist with the legal needs of our Latin community. I'm proud to say that no one else has made a greater effort to help injured people in our community than Ed Bernstein.

Ed Bernstein:

Take the first step.

Tag: Edward M. Bernstein & Associates
Attorneys At Law

3/1/94 - production
date

Robert Galloway - Attorney:

When a client comes into a law firm, it's really important for them to feel that the attorney cares about them and not just about their case. Here at Bernstein & Associates that's what we try and do. We try and make sure there's a feeling of trust between the client and the attorney.

Tag: Edward M. Bernstein & Associates
Attorneys At Law

Ed Bernstein:

I'm Ed Bernstein. My attorneys work hard to earn your trust.

I'm Ed Bernstein. Gary knows how often an accident causes anger and stress. We'll make sure you receive the compensation you deserve.

in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client. (Added 1-27-86, eff. 3-28-86.)

Editor's Note. — Former Rule 194 was repealed effective March 28, 1986.

Rule 195. Communications concerning a lawyer's services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

1. Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
2. Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law;
3. Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
4. Contains a testimonial or endorsement. (Readopted eff. 4-24-93.)

Editor's Note. — The order amending this rule, effective April 24, 1993, provided that if a printed medium containing a lawyer or law firm's advertisement is published less frequently than on a monthly basis and it is therefore impossible to cause such advertisement to comply fully with these amended and

adopted rules upon the effective date of the order, an advertisement in such medium shall be required to comply fully with these rules not later than the first publication date of the printed medium following the effective date of these rules.

Rule 196. Advertising.

1. Subject to the requirements of Rule 195, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, billboards and other signs, radio, television, and recorded messages the public may access by dialing a telephone number, or through written communication not involving solicitation as prohibited by Rule 197.

These rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and the advertisement is not intended primarily for broadcast or dissemination within the State of Nevada.

2. Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. The information shall be articulated by a voice, with no background sound other than instrumental music. The voice shall not be that of a celebrity whose voice is recognizable to the public. If a person appears as a lawyer in an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with

the law firm which is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these rules, the advertisement must disclose that such person is an actor.

3. All advertisements and written communications disseminated pursuant to these rules shall include the name of at least one lawyer or the lawyer referral service responsible for their content.

4. Except as provided in this section, all advertisements shall contain the following disclaimer: "The State Bar of Nevada does not certify any lawyer as a specialist or expert." This disclaimer need not appear in advertisements in the public print media that contain no illustrations and no information other than that listed in subsections 12(a)-(h) of this rule.

5. There shall be no dramatization, testimonials or endorsements in any advertisement in any medium. A lawyer's advertisement, regardless of medium, must provide only useful, factual information presented in a nonsensational manner. This rule is intended to preclude the use of scenes creating suspense, scenes containing exaggerations or situations calling for legal services, and scenes creating consumer problems through characterization and dialogue ending with the lawyer solving the problem.

6. Illustrations used in advertisements shall present information which can be factually substantiated. Provided that the scenes do not unduly appeal to any emotion or passion, permitted illustrations include scenes such as a lawyer working behind a desk, consulting with another attorney, working in the library, climbing courthouse steps, or other similar scenes reflecting activities commonly performed by lawyers.

7. Every advertisement and written communication that indicates one or more areas of law in which the lawyer or law firm practices shall conform to the requirements of Rule 198.

8. Every advertisement and written communication indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall contain the following disclaimer: "You may have to pay the opposing party's attorney's fees and costs in the event of a loss."

9. A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

10. A lawyer shall not make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications. This provision shall not apply to information furnished to a prospective client at the person's request or to information supplied to existing clients.

11. A lawyer shall not advertise services under a name that violates the provisions of Rule 199.

12. The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 195:

(a) Subject to the requirements of this rule and Rule 199, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, and a designation such as "attorney" or "law firm."

(b) Date of admission to the State Bar of Nevada and any other bars and a listing of federal courts and jurisdictions other than Nevada where the lawyer is licensed to practice.

(c) Technical and professional licenses granted by the state or other recognized licensing authorities.

(d) Foreign language ability.

(e) Fields of law in which the lawyer is certified or designated, subject to the requirements of Rule 198.

(f) Prepaid or group legal service plans in which the lawyer participates.

(g) Acceptance of credit cards.

(h) Fee for initial consultation and fee schedule, subject to the requirements of sections 8 and 9 of this rule.

(i) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

13. Nothing in this rule prohibits a lawyer or law firm from permitting the inclusion in law lists and law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

14. A copy or recording of an advertisement or written or recorded communication shall be retained by the lawyer or law firm which advertises for four years after its last dissemination along with a record of when and where it was used.

15. A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these rules and may pay the usual charges of a lawyer referral service or other legal service organization. (Readopted eff. 4-24-93.)

Editor's Note. — The order amending this rule, effective April 24, 1993, provides that if a printed medium containing a lawyer or law firm's advertisement is published less frequently than on a monthly basis and it is therefore impossible to cause such advertisement to comply fully with these amended and adopted rules upon the effective date of the

order, an advertisement in such medium shall be required to comply fully with these rules not later than the first publication date of the printed medium following the effective date of these rules.

Cross References. — As to the penalty for the unlawful solicitation of legal business, see NRS 7.045.

CASE NOTES

Cited in: *In re Drakulich*, 111 Nev. 1556, 908 P.2d 709 (1995).